

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NOEL GARCIA,

Plaintiff,

vs.

YAKIMA COUNTY  
DEPARTMENT OF  
CORRECTION, SGT. VAN  
KEULEN and LT. COSTELLO,

Defendants.

NO. 1:13-cv-03086-JPH

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
DISMISSING COMPLAINT

**1915(g)**

Before the Court is Magistrate Judge Hutton's Report and Recommendation to dismiss the Complaint for failure to state a claim upon which relief may be granted, ECF No. 10. Plaintiff's assertion that he was not provided a "bean-free" diet when he claimed to have a bean allergy, in the absence of a medical diagnosis to that effect, failed to state a claim of deliberate indifference to a serious medical condition. *Hudson v. McMillian*, 503 U.S. 1, 9 (1992); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

Plaintiff has not kept the court apprised of any change of address and copies of the Orders and the Report and Recommendation have been returned as undeliverable, ECF Nos 9 and 12. Plaintiff, who is proceeding *pro se* and *in forma pauperis*, has filed nothing further in this action. There being no objections, **IT IS ORDERED** the Report and Recommendation, ECF No. 10, is **ADOPTED in its entirety** and the Complaint is **DISMISSED with prejudice**. 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2).

ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING  
COMPLAINT -- 1

1 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings  
2 three or more civil actions or appeals which are dismissed as frivolous or for failure to  
3 state a claim will be precluded from bringing any other civil action or appeal *in forma*  
4 *pauperis* “unless the prisoner is under imminent danger of serious physical injury.” 28  
5 U.S.C. § 1915(g). **Plaintiff is advised to read the new statutory provisions under 28**  
6 **U.S.C. § 1915. This dismissal of Plaintiff’s complaint may count as one of the three**  
7 **dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file**  
8 **future claims.**

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
10 Order, enter judgment, forward copies to Plaintiff at his last known address, and close  
11 the file. The District Court Executive is further directed to forward a copy of this Order  
12 to the Office of the Attorney General of Washington, Criminal Justice Division. The  
13 Court certifies any appeal of this dismissal would not be taken in good faith.

14 **DATED** this 2nd day of January, 2014.

15  
16 *s/Lonny R. Suko*

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18 LONNY R. SUKO  
19 SENIOR U. S. DISTRICT JUDGE  
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